

BOARD OF APPEALS CASE NO. 5044

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BEFORE THE

APPLICANTS: Dennis & Helen Petty

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ZONING HEARING EXAMINER

**REQUEST: Variance to construct decks
within the required rear and side yard
setbacks; 1 Stuart Terrace, Bel Air**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 4/19/00 & 4/26/00

HEARING DATE: June 14, 2000

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Record: 4/21/00 & 4/28/00

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Dennis and Helen Petty, are requesting two variances to Sections 267-36B, Table IV, and 267-23C(1)(a)(6) of the Harford County Code, to construct a deck and a patio within the required 38 foot rear yard setback (29 feet proposed) and also within the required 11 foot side yard setback (8 feet proposed), in an R1/Urban Residential District.

The subject property is located at 1 Stuart Terrace, Bel Air, in the Third Election District. The parcel is more specifically identified as Parcel No. 789, Lot B, in Grid 3D, on Tax Map 49. The parcel contains .83 acres, more or less, all of which is zoned R1. While Table IV of the Code indicates that the applicable setbacks for a conventional single-family detached dwelling are 15 feet for the side yard and 50 feet for the rear yard, these requirements are reduced by 25 percent for decks and patios, pursuant to Section 267-23C(1)(a)(6), or to 11 feet and 38 feet respectively.

The Applicant, Mr. Dennis Petty, appeared and testified that he and his wife would like to build a deck and patio on the rear of their home, as they had planned to do at the time their house was constructed a short time ago. The house was actually built with four sets of sliding glass doors which exit to the side and the rear of the property and which were intended to provide access to the proposed deck, patio and rear yard. However, according to Mr. Petty, because of the unusual shape of the lot and the topography, which includes a stream to one side of the property, it is not possible for him to build the proposed deck without approval of the requested variances.

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Mr. Petty introduced several photographs of the home, all of which were marked and admitted, which show the sliding doors several feet above ground level, as well as the wooded areas on the lot which are in close proximity to the house. The proposal calls for a twelve (12) foot by 24 foot deck to be located off of the sliding door to the kitchen and which will wrap around to the side and rear of the home. He is seeking a three foot variance to the side yard setback (leaving eight feet to the side property line) and a nine foot variance to the rear yard setback (proposing a 29 foot rear setback) to accommodate the shape of the lot and the stream. According to Mr. Petty, he did not believe that approval of the variance requests would have any detrimental effect upon the adjoining properties or the neighborhood. In fact, it was Mr. Petty's testimony that construction of the proposed deck and patio would enhance the value of his home and add to the attractiveness of the site. He was not aware of any negative impacts associated with the proposal, nor did he believe that approval of the requests would impair the purpose of the Code or the public interest. He had read the Staff Report of the Department of Planning and Zoning, which was marked and admitted, and agreed to comply with any conditions which might be imposed upon approval.

The Staff Report recommends approval of the requested variances, noting that:

"The Department finds that the subject property is unique. As the site plan shows, the lot is unusually shaped. Because of the topography, the stream that cuts through the lot and the sewer easement, the buildable area is severely restricted on this lot. The Applicants' dwelling was designed with four (4) sets of sliding glass doors that were to access onto a deck and/or patio (see site photographs). With the existing trees and shrubbery on the subject lot and the adjoining lots, the proposal should not have any adverse impact on the adjacent property."

No witnesses appeared in opposition to the request.

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CONCLUSION:

The Applicants are requesting variances to Sections 267-36B, Table IV, and 267-23C(1)(a)(6) of the Harford County Code to allow construction of a deck and patio within the required rear and side yard setbacks in an R1/Urban Residential District. The Applicants are proposing a three foot variance to the required side yard setback (11 feet required, 8 feet proposed) and a nine foot variance to the required rear yard setback (38 feet required, 29 feet proposed).

While the required side and rear yard setbacks for a conventional single-family detached dwelling in an R1 District are designated in Table IV of the Code as 15 feet and 50 feet respectively, Section 267-23C(1)(a)(6) states:

“Exceptions and modifications to minimum yard requirements.

(1) Encroachment.

(a) The following structures shall be allowed to encroach into the minimum yard requirements, not to exceed the following dimensions:

[6] Unenclosed patios and decks: up to, but not to exceed, twenty-five percent (25%) of the side or rear yard requirement for the district. No accessory structure shall be located within any recorded easement area.”

In addition, Section 267-11A provides that a variance may be granted if:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.

The uncontradicted evidence offered by way of testimony, exhibits and the Staff Report of the Department of Planning and Zoning demonstrates that the subject property is unique based upon its irregular shape, the rolling to steep topography, which includes a stream that

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traverses the property, and the fact that the lot is densely wooded. All of these factors combine to severely limit the usable area to the side and rear of the home.

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It was clear from the testimony of the Applicant that the house was constructed with sliding glass doors located several feet off the ground for the sole purpose of being able to provide access to a planned deck. Denial of the requested variances would cause significant practical difficulty for the Applicants in that they would effectively be deprived of the use of the sliding glass doors to access their yard and their ability to enjoy their property and its unique environmental features would be significantly reduced. There was no evidence to suggest that approval of the variances would be detrimental to adjoining properties or to the neighborhood. Rather, construction of the proposed deck and patio would enhance the value of the home and improve the appearance of the home and yard. There does not appear to be any negative impact which would result from approval of the variance, and no impairment to the Code or the public interest was demonstrated.

Therefore, it is the recommendation of the Hearing Examiner that the Applicants' requests for a three foot variance to the side yard setback and a nine foot variance to the rear yard setback be approved, on the condition that the Applicants obtain all necessary permits and inspections.

Date AUGUST 9, 2000

**Valerie H. Twanmoh
Zoning Hearing Examiner**